

AUG 29 2013

Microsoft, Plaintiff,
vs.
Motorola, Defendant.

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

No. 10 - 1823

Inquiry from the Jury and
Court's Response

JURY INQUIRY:

Attached

Wednesday, 8/28/2013
12:10pm

PRESIDING JUROR

DATE AND TIME

COURTS RESPONSE: (After affording all counsel\parties opportunity to be heard):

Unless a term has been subject to testimony to the contrary, a term has its normal English usage meaning.

The term "indemnify" is used in Exhibit 1620, Paragraph ~~10~~ 13 which is attached. In addition, there has been testimony about this term during the trial. You may use this testimony to assist you to determine the meaning of the term.

Judge
JUDGE

DATE AND TIME RETURNED TO JURY: 8/29/2013

DO NOT DESTROY



MICROSOFT CONFIDENTIAL

make any public announcement or statement regarding this Agreement or the existence or any aspect of the business relationship between Supplier and Microsoft, or mentioning the Microsoft Device. Failure by Supplier to comply with the foregoing sentence will constitute a material breach of this Agreement, not subject to cure, and in addition to any other remedies available to Microsoft under this Agreement or by law or in equity, Microsoft may terminate this Agreement.

13. Indemnification and Covenant Not to Sue.

13.1 Indemnity. Supplier will, at its sole expense and upon Microsoft's written request, defend, indemnify and hold harmless Microsoft, Subcontractors, their respective successors and assigns, and the respective directors, officers, employees, agents, customers, affiliates, and distributors of each of the foregoing, from and against any and all claims, actions, demands, legal proceedings, liabilities, damages, losses, judgments, authorized settlements, costs and expenses, including attorney's fees, arising out of or in connection with any actual or alleged: (i) infringement and/or misappropriation by Supplier and/or any Product, and/or Supplier Firmware, and/or Deliverables (except to the extent that such infringement by Deliverables arises from (i) any computer code or ROM code provided by Microsoft to Supplier hereunder in source code, object code or other form and required by Microsoft to be included in the Deliverables; and/or (ii) a written technical requirement of Microsoft for the Deliverables, if such infringement would not have occurred but for such requirement and there was no commercially reasonable non-infringing way to implement such requirement); and/or Tools and/or the Driver of any patent, copyright, mask work right, trade secret, trademark or other intellectual property and/or proprietary right of any third party where ever located;

If Microsoft becomes aware of any such claim, Microsoft will provide Supplier with reasonably prompt written notice of the claim and reasonable cooperation in the defense thereof. Microsoft will not settle any such claim without Supplier's consent, which will not be unreasonably withheld. Microsoft will have the right to approve the counsel selected by Supplier to defend any such claim (such approval not to be unreasonably withheld) and will also have the right to have its own counsel participate in the defense of any such claim at Microsoft's own expense.

13.2 Duty to Correct. In addition to Supplier's indemnification obligations, if an infringement claim is made or is likely to be made, Supplier will, at Microsoft's option and Supplier's sole risk and expense: (i) procure for Microsoft and Subcontractors the right to continue directly and indirectly using, improving, selling, offering for sale and otherwise disposing of the infringing or allegedly infringing Products and/or Driver; (ii) replace such Products and/or Driver with non-infringing Products and/or Driver; or (iii) modify such Products and/or Driver so that they becomes non-infringing. Any such replacement or modification must conform to the Specifications and the Microsoft Standards and Requirements, provide equivalent performance in the Microsoft Device, and not require any change to Microsoft's specifications for the Microsoft Device, interfere with Microsoft's or any Subcontractor's production schedule or require any recall of any Microsoft Device

14. Representations and Warranties

Supplier represents, warrants and covenants that: (i) Supplier has the full power to enter into and perform its obligations under this Agreement, and to grant the rights granted to Microsoft under this Agreement; (ii) Supplier has not previously granted, and will not grant, to any third party any right in any of the Deliverables, the Supplier Firmware, the Tools, the Driver or the Product that is inconsistent with the rights granted to Microsoft under this Agreement; (iii) The Deliverables, the Supplier Firmware, the Tools, the Driver and the Product (excluding only the Microsoft Materials as provided by Microsoft) are original to Supplier or its suppliers, and do not and will not infringe or misappropriate any patent, copyright, mask work right, trade secret or other proprietary right of any third party; (iv) The Deliverables will be created by employees of Supplier (or its permitted affiliates and/or subcontractors as set forth in Section 1.1) within the scope of their employment and under obligation to assign all rights in the Deliverables to Supplier; (v) Supplier will provide Microsoft with good and marketable title to the Deliverables and Product free and clear of any lien, claim, security interest or other encumbrance; (vi) The Services will be performed in a professional and workmanlike manner consistent with all applicable industry standards and conform to all the requirements of applicable law including all applicable health, safety and environmental regulations; (vii) all Products, Supplier Firmware, Tools and the Driver will be free from defects in design, material and workmanship for the time period set forth in Exhibit C (the "Warranty Period"); (viii) all Products will conform to the Microsoft Standards and Requirements, the Product Specifications and any and all Supplier issued Product literature; and (ix) all Products will be new and unused. (x) No Deliverable, Supplier Firmware, Tools, Driver or Product, when delivered to Microsoft, will be, or use any software or other technology that is, in whole or in part governed by or subject to any license that requires that any: (a) Deliverable, Driver, Tools or component or portion thereof; (b) Derivative Technology of any Deliverable, Driver, or Tools, including without limitation the Microsoft Modifications; (c) other software, technology, product, service or documentation incorporating or derived from any Deliverable, Driver or Tools including without limitation the Microsoft Modifications; or (d) other software, technology, product, service or documentation combined and/or distributed with any Deliverable, Driver or Tools or Derivative Technology of any Deliverable, Driver or Tools including without limitation the Microsoft Modifications be: (x) disclosed or distributed in source code form; (y) licensed for the purpose of making derivative works; or (z) redistributable at no charge

15. Disaster Recovery Plan and Insurance.

15.1 Disaster Recovery Plan. Throughout the Term, Supplier will maintain a written disaster recovery plan (the "Disaster Recovery Plan") in order to ensure the supply of Products to Microsoft and Subcontractors in the event of a force majeure or other similar disruption. Supplier will submit a written Disaster Recovery Plan proposal to Microsoft for Microsoft's review and written approval within one hundred twenty (120) days after the Effective Date. Any material changes to the Microsoft approved Disaster Recovery Plan will be subject to Microsoft's prior review and written approval (not to be reasonably withheld). Supplier will promptly implement the Microsoft approved Disaster Recovery Plan upon any force majeure or similar circumstances.

15.2 Insurance. At all times during the Term, Supplier will, at its own expense, maintain in force policies of insurance with reputable insurers sufficient in coverage and amounts to secure its obligations and potential liabilities under this Agreement. All premiums, and any

Could the meaning of
"indemnify," in the context
of the Marvel request for
license, please be explained?

Very truly yours,
Mary Clare King